

**IRENEO TOBIAS, JESUS TOBIAS, CRISPINA TOBIAS, ANTONIO TOBIAS
– GUARDIAN AD LITEM JESUS TOBIAS, PETITIONERS, VS.
HONORABLE TEMISTOCLES B. DIEZ (PRESIDING JUDGE OF THE
COURT OF FI...**

G.R. No. 56865. September 02, 1992

Ponente: MELO, J.

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MELO, J.:

The controversy at bar is focused on whether the doctrine of res judicata was properly appreciated by the court a quo as to completely foreclose the institution of the case for reconveyance by herein petitioners in view of the final disposition made by the same magistrate in a previous suit for partition involving the same subject matter.

Felisa Tobias, the mother of herein petitioners and of respondent Capitolina Tobias, obtained the realty in dispute via purchase from Manuela, Antonio and Lourdes Tarrius on September 19, 1958 to the extent of three-fourths thereof (p. 28, Rollo) for which Transfer Certificate of Title No. 2248 was issued. Prior to her demise on October 6, 1965, she sold the property through pacto de retro to Enrique Ciacho and Roberto Uy Kim who later consolidated ownership thereon when redemption was not effected (page 36, Rollo). After the cancellation of Transfer Certificate of Title No. 2248 and the issuance of Transfer Certificate of Title No. 5872 in favor of the vendees a retro, the property was again sold in favor of Capitolina Tobias to whom Transfer Certificate of Title No. 5902 was issued on March 8, 1966. It also appears from the record that a suit for partition was filed by Jesus Tobias on June 6, 1967 against his brothers and sisters geared towards the distribution among the heirs of the assets left behind by their mother but the judgment in that case, which later became final, did not include the property involved herein as part of the mass of assets which was adjudicated.

On the basis of these factual backdrop, herein petitioners proceeded to assume that their sister, Capitolina Tobias, obtained her title in breach of trust inasmuch as her brothers and sister were fraudulently deprived of their share as primary heirs over the lot in question. More significantly, petitioners alleged in the complaint for reconveyance filed on September 19, 1980 that Capitolina Tobias' so-called exclusive dominion has no basis since no categorical pronouncement was made by the Honorable Temistocles B. Diez of Branch 9 of the then Court of First Instance stationed at Palo, Leyte when the case for partition was disposed of. (paragraph 3, Complaint; page 17, Rollo).

In resisting the plea for restitution, separate motions to dismiss grounded on bar by prior judgment and prescription were presented by Capitolina Tobias, Roberto Uy Kim and Enrique Ciacho. The primary form of avoidance merited the approval of the Honorable Temistocles B. Diez who observed in the process of directing the extinction of petitioners' application for reconveyance that:

"... It is not disputed that the property subject of the present action which is the 'residential and commercial land and building at San Ramon and San Agustin Streets, Burauen, Leyte,' is the same land and building which was sought to be partitioned together with the other properties in Civil Case No. B-012 of this Court. It

is also not disputed that except for the addition of Roberto Uy Kim and Enrique Ciacho in the present action, the parties in the present case and in the previous case, Civil Case No. B-012 are the same. There is no dispute that the judgment in Civil Case No. B-012 has long been final and as a matter of fact has already been executed. The matter as to whether the said 'residential and commercial land and building at San Ramon and San Agustin Streets, Burauen, Leyte' was part of the estate of Felisa Tobias or the land of Capitolina Tobias, was, with the agreement or acquiescence of the parties themselves who presented evidence to prove their respective positions actually and directly controverted, determined and resolved by the Court in its decision in Civil Case No. B-012. The judgment on the merits in Civil Case No. B-012 should therefore bar the present action considering that the present action though denominated as "Conveyance of Title in Breach of Trust; Cancellation of Certificate of Title and documents with damages, actually seeks the partition of the same property, among them, the Tobias brothers and sisters." (p. 3, Order dated February 26, 1981; page 63, Rollo)

Petitioners' motion for reconsideration of the order of dismissal was to no avail (page 76, Rollo). Hence, the appeal before Us which impugns the pronouncements of the court a quo, particularly those with respect to the principle of res judicata.

The zeal and effort exerted by the judge below in holding that the complaint is barred by prior judgment does not quite agree with his disposition in the partition case where he declared:

"WHEREFORE, and in view of the foregoing, it is hereby adjudged and decreed:

1. That the respective interest of the plaintiff and the defendants in the remaining unadjudicated properties as contained in the Commissioners' Report dated April 21, 1973 and found on pages 267 to 269 of the Records are as follows: That plaintiff Jesus Tobias is entitled to one-fifth (1/5), defendant Capitolina Tobias one-fifth (1/5), defendant Ireneo Tobias (1/5), and defendant Antonio Tobias one-fifth (1/5) of said properties consisting of the general merchandise and equipment at the store located at San Ramon and San Agustin Streets, Burauen, Leyte, and the piano in the possession of defendant Capitolina Tobias, as owners.
2. That defendant Capitolina Tobias is hereby ordered to give and deliver to her co-heirs and co-owners the value of their respective interests therein corresponding to P2,228.00 for Jesus Tobias, P2,228.00 for Crispina Tobias, P2,228.00 for Ireneo Tobias, P2,228.00 for Antonio Tobias and P2,228.00 as her share, this, upon the basis of the appraisal made by the Commissioners as shown in their Report dated April 21, 1973, found on pages 267 to 269 of the Records;
3. That should defendant Capitolina Tobias refuse and fail to give and deliver to her co-heirs and co-owners the value of their respective interests in the said properties, the Commissioners of this Court namely Atty. Severino Trocino, Fiscal Manuel C. Tutaan and Engineer Benedicto Enerlan are hereby authorized to sell the said properties mentioned within thirty days from the finality of this judgment and to partition and divide the proceeds of said sale after deduction the costs of this suit, of the sale and their fees as Commissioner, equally among the parties plaintiff and defendants.
4. That plaintiff recover from the defendant Capitolina Tobias the filing fee in the sum of P150.00 and the sum of P300.00 for the publication of the Complaint which plaintiff incurred by reason of this action."

(pages 20-21, Decision in Civil Case No. 4051 B-012 dated June 3, 1975; pages 96-97, Rollo)

and in the process, missing to respond squarely to the primordial query raised in the action for partition as to:

"a) Who owns the properties mentioned and listed in the complaint which are disputed, and those which are listed as undisputed properties of Felisa Tobias in the motion for partial judgment;"

(page 9, Decision in Civil Case No. 4051 B-012 dated June 3, 1975; page 85, Rollo)

There is, therefore, no categorical pronouncement in the partition case concerning Capitolina Tobias' ownership

which she can utilize to her advantage in the subsequent case for reconveyance.

While the trial court in the suit for partition may have tackled the aspect of Capitolina Tobias' dominion over said pieces of realty, the fallo of the decision rendered on June 3, 1975 was completely mute on the so-called proprietary right of Capitolina Tobias. Indeed, the significant question in passing upon the plea of *res judicata* is whether the Court decided the controverted point specifically as to remove the necessity to look for extraneous matters to fill the hiatus (*Lamb vs. Wahlenmaier*, 144 Cal. 91; 77 Pac. Rep. 765; *Choteau vs. Gibson* 76 Mo. 38), and tested by this shibboleth, We believe that the trial court did not so react in the particular fashion and in the manner that Capitolina Tobias would want to impress upon Us.

There being no specific and unequivocal pronouncement of Capitolina Tobias' ownership in the dispositive portion of the judgment of distribution, although such claim was touched upon in the text of the decision, the presumption of *res judicata* cannot be inferred therefrom (*Archbishop of Manila vs. Director of Lands*, 35 Phil. 339; 351) since it is the decretal portion and not the expressions made in the body of the decision that controls (*Siari Valley Estates, Inc. vs. Lucasan and Honorable Judge Ortega*, 102 Phil. 390; 393; *Government of the Philippines vs. Jose Ramon y Vasquez*, 73 Phil. 669; 670; cited by Francisco, *Revised Rules of Court in the Philippines*, Annotated and Commented, Volume 2, 1966 edition, page 855; *Espiritu vs. Court of First Instance of Cavite*, 166 SCRA 394; 399; *Medello vs. Gorospe* 159 SCRA 248; 253). Verily, the obiter dictum which was relied upon by Capitolina Tobias cannot be considered binding for the purpose of establishing a precedent (*Herrera, Remedial Law*, Volume 2, 1990 edition, page 209 citing *Black's Law Dictionary*, 5th edition, page 967).

Perhaps, Capitolina Tobias and her counsel were satisfied with the statements uttered by the magistrate in the action for partition with reference to the sufficiency of Capitolina Tobias' claim of ownership, such that they failed to realize that a vacuum existed in the dispositive portion of the judgment. For this serious deficiency, which could have been rectified by a motion for clarification or an appeal therefrom, Capitolina Tobias must realize and concede that she may not now claim that the present action is barred by prior judgment, absent as there is a categorical adjudication of ownership in her favor over the disputed property (*Edwards, et al. vs. Arce, et al.*, 98 Phil 689; 692; 693). Of course, We are not unmindful of the principle in adjective law and statutory construction that the findings of the court can be considered in the interpretation of the judgment like what this Court did in *Aguirre v. Aguirre*, (58 SCRA 461). But, We are not prepared to accord a similar treatment to the issue at hand for the simple reason that the principle adverted to is premised on an ambiguity in the fallo, which saving circumstance is glaringly wanting in the situation now obtaining.

Neither can We assume that the alleged ownership of Capitolina Tobias had been settled authoritatively as to call for the application of the other tenet in procedural law on "conclusiveness of judgment" since, to repeat, there was really no final adjudication of such right in her favor, apart from the fact that the grievance raised by petitioners herein relative to the alleged fraudulent acquisition by Capitolina Tobias had not been presented and actually disposed of in the first case for partition (*Penalosa vs. Tuason*, 22 Phil. 303; 312; *Philippine National Bank vs. Barreto*, 52 Phil. 818; 824; *Namarco vs. Judge Macadaeg*, 52 O.G. 182; cited by Moran, *Comments on the Rules of Court*, Volume 2, 1970 edition, page 322).

WHEREFORE, the petition is hereby GRANTED. The order appealed from dismissing the case for reconveyance due to *res judicata* is hereby REVERSED and SET ASIDE. The case is ordered REMANDED to the court of origin for further proceedings. No special pronouncement is made as to costs.

IT IS SO ORDERED.

Narvasa, C.J., Padilla, Regalado, and Nocon, JJ., concur.

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